STATE OF MICHIGAN

COURT OF APPEALS

MARVIN MARSHALL and CHRISTINE MARSHALL, Plaintiffs-Appellees, v BOYNE USA, INC., Defendant-Appellant.	UNPUBLISHED May 15, 2012 No. 301725 Charlevoix Circuit Court LC No. 10-091822-NF

Before: HOEKSTRA, P.J., and SAWYER and SAAD, JJ.

PER CURIAM.

Defendant appeals by leave granted from the circuit court's order denying defendant's motion for summary disposition. We reverse and remand.

In 2009, plaintiff Marvin Marshall was skiing at defendant's ski resort at Boyne Mountain in Charlevoix County with a friend, Randy. They skied several trails that morning, and also skied in the terrain park. Plaintiff was familiar with and had skied in terrain parks, which he described as having "jumps and different obstacles[.]" Plaintiff saw a warning sign at the entrance to the terrain park, but he did not read it.

The terrain park contained a half pipe that was about twenty feet deep. A half pipe is a ski attraction created by a trench in the snow that extends downhill. Skiers ski inside of the half pipe. On the morning of February 5, plaintiff saw the half pipe in the terrain park, but he did not ski into it. Plaintiff skied in an area just to the right of the half pipe.

After lunch, plaintiff and his friend went into the terrain park for a second time. They entered the terrain park from the left side this time. Plaintiff skied down the terrain park and hit the edges of a series of jumps. When plaintiff was halfway down the hill, Randy yelled to him and plaintiff stopped. Randy said that there was a good jump to their right that would be "good to hit." Randy went first, and plaintiff followed. Plaintiff proceeded laterally across the hill (to the right, if one is facing downhill). Plaintiff "came almost straight across because there was enough of an incline . . . [he] didn't have to come downhill much."

Plaintiff successfully navigated the jump, which caused him to go up into the air about 12 to 15 feet. He landed and came to a stop by turning quickly to the right and power-sliding to a stop. As he looked around for Randy, plaintiff felt his feet go over the edge of the half pipe. He

slid down the side a little bit, and then hit the bottom. Plaintiff shattered his left calcaneus (heel) and the top of his tibia, and broke his hip and right arm. He also fractured his left eye socket where his pole hit his head when he fell.

Plaintiffs filed the instant action, alleging that defendant was negligent in failing to adequately mark the boundaries of the half pipe. Defendant moved for summary disposition, arguing that plaintiffs' claim was barred both under the Ski Area Safety Act (SASA), MCL 408.321 *et seq.*, and by reason of two liability releases, one that plaintiff signed when he rented the ski equipment and a second that was printed on the back of his lift ticket. The trial court denied the motion, concluding that there remained issues of fact. Thereafter, we granted defendant's motion for leave to appeal. We review the trial court's decision de novo. *Anderson v Pine Knob Ski Resort, Inc*, 469 Mich 20, 23; 664 NW2d 756 (2003).

We agree with defendant that SASA bars plaintiffs' claim. Under SASA, a skier assumes the risk for those dangers that inhere in the sport of skiing unless those dangers are unnecessary or not obvious. *Anderson*, 469 Mich at 26. Among the risks assumed are "variations in terrain." MCL 408.342(2). Moreover, defendant did not breach a duty imposed under the act. MCL 408.326a imposes a duty on the ski resort to mark certain hazards involving equipment and fixtures, which is not relevant here, as well as a duty to place a sign at the top of a run, slope or trail with certain information regarding the difficulty of that run, slope or trail. There is no dispute that defendant complied with this requirement. Rather, plaintiffs argue that defendant breached a duty not imposed by the statute: to mark the half pipe itself. But *Anderson* makes clear that when SASA resolves a matter, common-law principles are no longer a consideration. *Anderson*, 469 Mich at 26-27. By choosing to ski in the terrain park, which was marked with signage as required by the SASA, and which contained the half pipe that plaintiff saw earlier that day, plaintiff is held to have accepted the danger as a matter of law. *Anderson*, 469 Mich at 25-26.

Accordingly, defendant was entitled to summary disposition by application of SASA. In light of this conclusion, we need not consider whether defendant was also entitled to summary disposition under the liability waivers.

Reversed and remanded to the trial court with instructions to enter an order of summary disposition in defendant's favor. We do not retain jurisdiction. Defendant may tax costs.

/s/ David H. Sawyer
/s/ Henry William Saad